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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 MARK ANTHONY GALLEGOS,

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16 Defendant.
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Criminal Case No. 08 cr 1552-W
Mag. Docket No. 08 mj 8333

**ORDER FOR VIDEO DEPOSITION AND
RELEASE OF MATERIAL WITNESS
ISMAEL ANYON-FERNANDEZ**

JUDGE: Hon. Peter C. Lewis
CRTRM:

DATE: June 9, 2008
TIME: 1:30 p.m.

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21 Upon request of counsel for the material witness ISMAEL ANYON-FERNANDEZ
22 (“ANYON”) Gayle Mayfield-Venieris, and good cause appearing:

23 1. The material witness ANYON, being held in custody in case number 08 mj
24 8333/08 cr 1552-W, shall be deposed on July 1, 2008 at 10:00 a.m. The deposition will take
25 place in the office of the United States Attorney located at 880 Front Street, Fifth Floor, San
26 Diego, California, 92101.
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2. All parties, meaning the United States and the defendant, shall attend the material witness deposition. The arresting agency shall bring the material witness to the deposition and a marshal shall remain present during the proceeding. If the defendant are in custody, they shall be brought separately to the deposition and a marshal shall remain present during the proceeding.

3. The United States Attorney's Office shall provide a videotape operator ("operator") and if necessary, arrange for a court certified interpreter to be present for the material witness. The cost of the interpreter of the material witness shall be borne by the United States Attorney's Office.

4. If the defendant needs an interpreter other than the interpreter for the material witness, defense counsel shall arrange for a certified court interpreter to be present. The cost of a separate interpreter for the defendant shall be paid by the Court.

5. The United States Attorney's Office shall arrange for a certified court reporter to be present. The court reporter shall stenographically record the testimony and serve as a notary and preside at the deposition in accordance with Rule 28(a) of the Federal Rules of Civil Procedure. The cost of the court reporter shall be borne by the United States Attorney's Office.

6. The deposition shall be recorded by videotape, meaning a magnetic tape that records sound as well as visual images. At the conclusion of the deposition, on the record, the witness or any party may elect to have the witness review the videotaped record of their deposition to check for errors or omissions and to note any changes. Any errors, omissions or changes, and the reasons for making them shall be stated in writing and such writing shall be signed by the witness, delivered to the notary in a sealed envelope and filed in the same fashion as described in Paragraph 17 below, unless the parties agree on the record to a different procedure.

7. The operator shall select and supply all equipment required to videotape the deposition and shall determine all matters of staging and technique, such as number and placement of cameras and microphones, lighting, camera angle, and background. The operator shall determine these matters in a manner that accurately reproduces the appearance of the witness and assures clear reproduction of both the witness's testimony and the statements of

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3 counsel. The witness), or parties to the action, may object on the record to the manner which the
4 operator handles any of these matters. All such objections shall be deemed waived unless made
5 promptly after the objector knows, or has reasonable grounds to know, of the basis of such
6 objection.

7 8. The deposition shall be recorded in a fair, impartial and objective manner. The
8 videotape equipment shall be focused on the witness; however, the videotape operator may,
9 when necessary, focus upon charts, photographs, exhibits, or like material being shown to the
10 witness.

11 9. Before examination of the witness begins, the Assistant U.S. Attorney shall state
12 on the record his name; the date, time, and place of the deposition; the name of the witness; the
13 identity of the parties and the names of all person present in the deposition room. The court
14 reporter shall then swear the witness on the record. Prior to any counsel beginning an
15 examination of the witness, that counsel shall identify himself and his respective client on the
16 record.

17 10. Once the deposition begins, the operator shall not stop the videotape recorder
18 until the deposition concludes, except that, any party or the witness may request a brief recess,
19 which request will be honored unless another party objects and specifies a good faith basis for
20 the objection on the record. Each time the tape is stopped or started, the operator shall state on
21 the record the time the recording stopped and the time it resumed. If the deposition requires the
22 use of more than one tape, the operator shall sequentially identify on the record the end and
23 beginning of each tape.

24 11. All objections both as to form and substance shall be recorded as if the objection
25 had been overruled. The Court shall rule on objections at the appropriate time. The party raising
26 the objection(s) shall prepare a transcript for the Court to consider. All objections to the
27 evidence shall be deemed waived unless made during the deposition.

28 12. The party offering the deposition into evidence at trial shall provide the Court
with a transcript of the portions so offered.

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3 13. Copies of all exhibits utilized during the videotaped deposition shall be attached
4 to the videotaped record.

5 14. At the conclusion of the deposition, any objection, including the basis, to release
6 of the material witness from custody shall be stated on the record. If there is no objection, the
7 attorney for the material witness shall immediately serve all parties with a "Stipulation and
8 Proposed Order for Release of Material Witness" and submit the Order to the Clerk of the Court
9 for the Judge's signature. Prior to release from custody, the attorney for the Government shall
10 serve the material witness with a subpoena for the trial date and a travel fund advance letter.

11 15. The operator shall provide a copy of the videotaped deposition to any party who
12 requests a copy at that party's expense. After preparing the requested copies, if any, the operator
13 shall deliver the original videotape to the notary along with a certificate signed by the operator
14 attesting that the videotape is an accurate and complete record of the videotaped deposition. The
15 operator shall then deliver the videotape to the notary along with a certificate signed by the
16 operator attesting that it is an accurate and complete recording of the deposition. The notary
17 shall file the original tape and certification with the Clerk of the Court in a sealed envelope
18 marked with the caption of the case, the name of the witness and the date of the deposition.

19 16. The notary shall file with the Clerk of Court in a sealed envelope the original
20 videotape, along with any exhibits offered during the deposition. The Sealed envelope shall be
21 marked with the caption of the case, the name of the witness, and the date of the deposition. To
22 that envelope, the notary shall attach the certificate of the operator. If all counsel stipulate on the
23 record, the Government may maintain the original videotape until production is ordered by the
24 Court or requested by any party.

25 17. Unless waived by the parties, the notary must give prompt notice to all parties of
26 the filing of the videotaped record of the deposition with the Court pursuant to Federal Rule of
27 Civil Procedure 30(f)(3).

28 18. If any party objects on the record to the release of the material witness from
custody, the objecting party must request in writing a hearing on the issue before the federal
judge who is assigned the case or to such other district judge or magistrate judge as they

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2 designate. Notice of the Request for Hearing must be served on all parties and filed with the
3 Clerk of Court within twenty-four (24) hours after the completion of the deposition, with a
4 courtesy copy to chambers. The Court will set a briefing schedule, if appropriate, and a date and
5 time for the objection to be heard as soon as reasonably practicable. At the hearing, the objecting
6 party must establish to the Court's satisfaction an appropriate legal basis for the material witness
7 to remain in custody. If, after the hearing, the Court orders the release of the material witness,
8 the material witness's attorney shall immediately present the release order to the Court for
9 signature and filing. Before release of the material witness from custody, the Government shall
10 serve the material witness with a subpoena for the trial date and a travel fund advance letter.
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12 **IT IS SO ORDERED.**
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15 Dated: June 9, 2008



HON. PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

MAYFIELD & ASSOCIATES
ATTORNEYS AT LAW
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SOLANA BEACH, CA 92075-2066